



40 CFR Part 282

[EPA-R03-UST-2021-0862; FRL-9625-02-R3]

Delaware: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to Delaware's Underground Storage Tank (UST) program submitted by Delaware (Delaware or State). This action also codifies EPA's approval of Delaware's State program and incorporates by reference (IBR) those provisions of Delaware's regulations and statutes that EPA has determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives significant negative comments opposing this action by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives significant negative comments opposing this action, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* Cato.Diashinae@epa.gov.

Instructions: Direct your comments to Docket ID No. EPA-R03-UST-2021-0862.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal website, <https://www.regulations.gov>, is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by e-mail or phone.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, *e.g.*, CBI or other

information whose disclosure is restricted by statute. Publicly available materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Diashinae Cato, (215) 814-2738, cato.diashinae@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, Four Penn Center, 1600 John F. Kennedy Blvd. (Mailcode 3LD30), Philadelphia, PA 19103-2852.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Delaware’s Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the Federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is “no less stringent” than the Federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as Delaware that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling Federal or state statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the Federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On November 22, 2021, in accordance with 40 CFR 281.51, Delaware submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). Delaware’s revisions correspond to the EPA final rule published on July 15,

2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable State authorities; and copies of all relevant State statutes and regulations. EPA has reviewed the State Application and determined that the revisions to Delaware's UST program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that Delaware's program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants Delaware final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Delaware, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives

significant negative comments that oppose this approval, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Delaware previously been approved?

On September 27, 1996, the EPA finalized a rule approving Delaware's UST program, effective October 28, 1996 (61 FR 50720), to operate in lieu of the Federal program. EPA has not codified Delaware's approved program prior to this action.

G. What changes is EPA approving with this action?

On November 22, 2021, in accordance with 40 CFR 281.51, Delaware submitted a complete application for final approval of its UST program revisions adopted on December 12, 2019, effective January 11, 2020, and then amended on January 4, 2021, effective February 21, 2021. EPA has reviewed Delaware's UST program requirements and determined that such requirements are no less stringent than the Federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. As part of the State Application, the Attorney General for Delaware certified that the laws and regulations of Delaware provide adequate authority to carry out a program that is "no less stringent" than the Federal requirements in 40 CFR part 281. EPA is relying on this certification in addition to the analysis submitted by Delaware in making our determination. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that Delaware's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Delaware final approval for the following program changes:

| Required Federal Element | Implementing State Authority |
|--------------------------|------------------------------|
|--------------------------|------------------------------|

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|---|--|
| 40 CFR 281.30, New UST Systems and Notification | 7 Del. Admin. Code 1351 Part A §§ 1.3, 4.1.1, 4.4, 4.6.2, Part B §§ 1.1, 1.3, 1.4, 1.6-1.9, 1.19.2, 1.22, 1.21, 1.25, 1.26, 2.1, 2.22, 2.23, Part D §§ 1.1, 1.3, 1.4, 1.6-1.8, 1.9.2, 1.19.2, 1.21, 1.22, 1.25, 1.26, Part H §§ 1.1.2.1, 1.1.2.2, 2.1.1, 2.2.3, Part I §§ 1.1.2.1, 1.1.2.2, 2.2.3 |
| 40 CFR 281.31, Upgrading Existing UST Systems | 7 Del. Admin. Code 1351 Part B §§ 2.15.1, 2.22-2.25, 2.27.1, 2.29.1, 2.34, Part D § 1, Part H §§ 1.1.1, 2.2, Part I §§ 1.1.1, 2.2 |
| 40 CFR 281.32, General Operating Requirements | 7 Del. Admin. Code 1351 Part A §§ 1.3.1.3, 5.1, 13.0, Part B §§ 1.1.2, 1.21, 1.22, 1.24, 1.25, 1.28, 1.29.6, 1.29.7, 1.31, 2.1.1, 2.1.2, 2.22, 2.23, 2.25, 2.26, 2.29, 2.30.6, 2.30.7, 2.32, Part D §§ 1.1.2, 1.21, 1.22, 1.24, 1.25, 1.28, 1.29, Part H §§ 1.1.2.2, 2.2, 2.3, Part I §§ 1.1.2.2, 2.2, 2.3 |
| 40 CFR 281.33, Release Detection | 7 Del. Admin. Code 1351 Part B §§ 1.9.1, 1.9.2, 1.9.4.5, 1.9.5.2, 1.17-1.20, 2.9.1, 2.9.2, 2.9.4.5, 2.9.5.2, 2.18-2.21, Part D §§ 1.9, 1.18-1.20, Part H § 2.4, Part I § 2.4 |
| 40 CFR 281.34, Release Reporting, Investigation, and Confirmation | 7 Del. Admin. Code 1351 Part E §§ 1.0, 2.0, 4.0 |
| 40 CFR 281.35, Release Response and Corrective Action | 7 Del. Admin. Code 1351 Part E §§ 1.6, 3.2, 3.3, 4.0, 5.1-5.6 |
| 40 CFR 281.36, Out-of-service Systems and Closure | 7 Del. Admin. Code 1351 Part A §§ 4.1.6, 4.8, Part B §§ 3.1, 3.2.1-3.2.4, 3.4.1, 3.4.2.7, 4.2, 4.6, 6.2, Part D 2.1, 2.2, 2.4.1, 3.6, 5.2, Part E, Part H § 2.5, Part I § 2.5 |
| 40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum | 7 Del. Admin. Code 1351 Part F §§ 1.1.6-1.1.8, 1.3.1, 1.3.2, 2.0 |
| 40 CFR 281.38, Lender Liability | 7 Del. Admin. Code 1351 Part A § 2.0 |
| 40 CFR 281.39, Operator Training | 7 Del. Admin. Code 1351 Part A § 10.0 |

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. Delaware's lead implementing agency, the Department of Natural Resources and Environmental Control (DNREC), has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure and UST releases, and to issue orders. The statutory

and regulatory authority is found in the Delaware Code (Del. C.) at Title 7, Chapter 60, Sections 6001-6039 and Chapter 74, Sections 7401-7425 and in the Delaware Administrative Code (Del. Admin. Code) Title 7, Chapter 1351.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following Delaware requirements are considered “broader in scope” than the Federal program:

- Delaware charges fees for UST registration. 7 Del. Code §§ 7409(c), 7418, 7 Del. Admin. Code 1351-A-4.1.4, -4.2.
- Delaware regulates agricultural and residential USTs of 1,100 gallons or less used for storing motor fuel for noncommercial purposes. 7 Del. Code § 7404(1), 7 Del. Admin. Code 1351-A-1.2.1.1. Such USTs are excluded from the Federal definition of UST.
- Delaware regulates UST systems holding Solid Waste Disposal Act Subtitle C hazardous wastes or a mixture of such hazardous wastes and other regulated substances, wastewater treatment tank systems that are part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act, 42 U.S.C. 1342 and 1317(b), equipment and machinery that contain regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks, UST systems whose capacity is 110 gallons or less, and any emergency spill or overflow containment UST systems that are expeditiously emptied after use. 7 Del. Admin. Code 1351-A-1.2.1.3 to .7. Such tanks and tank systems are excluded from the requirements of the Federal regulations.

- Delaware does not explicitly exempt from regulation UST systems that contain de minimis concentrations of regulated substances as it does for other tanks at 7 Del. Admin. Code 1351-A-1.2.1.
- Delaware has a licensure/certification program for various UST handling activities and requires the use of certified persons for certain UST handling activities (the requirement to use a certified person for installation is not considered broader in scope). 7 Del. Code § 7425, 7 Del. Admin. Code 1351 Part G, see also 1351-A-11.0.
- Delaware regulates a broader class of persons than owners or operators of USTs. Specifically, Delaware applies release investigation, response, and corrective action requirements to a “responsible party” or “person,” and certain spill and overfill prevention requirements to a “person.” 7 Del. Code §§ 7401, 7402, 7406(a)-(d), (e) introductory paragraph, 7 Del. Admin. Code 1351-A-2.0, 1351-B-1.21.1, -1.22.1 and .2, -1.29.7.1, -2.22.1, -2.23.1 and .2, -2.30.7.1, 1351-D-1.21.1, -1.22.1 and .2, 1351-E-1.2, -1.3, -2.1, -2.2, -2.4, -3.2, -3.3, -4.0, -5.0, -6.0.
- Delaware regulates substances not regulated under the Federal program. Definition of “regulated substance” at 7 Del. Admin. Code 1351-A-2.0.
- Delaware regulates USTs that contain heating fuel for consumptive use on the premises where stored. 7 Del. Code §§ 7404(2), 7405(a)(2) and (3), 7 Del. Admin. Code 1351 Part C, see also A-1.2.1.2, -4.5.2, -4.6.2, -10.1.1, -11.0, -12.0, 1351-E-6.2.3, 1351-H-1.1.2.2, 1351-I-1.1.2.2. Such USTs are excluded from the Federal definition of UST.
- Delaware’s definition of “consumptive use” is limited to activities that do not result in monetary gain. 7 Del. Admin. Code 1351-A-2.0.
- Delaware requires all appropriate inquiry during the purchase of residential property. 7 Del. Admin. Code 1351-E-7.0.

- Delaware requires owners and operators to follow Occupational Safety and Health Administration (OSHA) standards and certain OSHA permitting requirements. 7 Del. Admin. Code 1351-A-3.1.10, -3.3.8, 1351-B-1.3.2.4, -4.2.1.3, -5.2.1.3, 1351-D-1.3.2.4, -3.2.1.3, -4.2.1.3.
- Delaware requires DNREC to approve or deny construction work within fourteen days of receipt of construction plans and notification form for repairs, retrofits, or upgrades that require post-construction testing or site assessment. 7 Del. Admin. Code 1351-A-4.7.1 and .2.
- Delaware requires the posting of permits to be kept at the UST site during construction. 7 Del. Admin. Code 1351-A-4.9.1.
- Delaware imposes requirements on dispenser system hoses such as maximum dispenser hose lengths. 7 Del. Admin. Code 1351-B-1.1.8, -2.1.8.

In accordance with 40 CFR 281.12(a)(3)(ii), the additional coverage listed above is not part of the federally-approved program and is not federally enforceable.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved program into the Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the Federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally

enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Delaware's UST program?

EPA has not previously incorporated by reference Delaware's UST program. In this document, EPA is amending 40 CFR 282.57 to include the approved revised program.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Delaware statutes and regulations described in section I.G. of this preamble except for any requirements that are broader in scope or serve as state enforcement authority. The specific requirements to be incorporated are set forth below in the amendments to 40 CFR part 282. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 3 office (see the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

One purpose of this rule is to codify Delaware's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to Delaware's UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. This rule incorporates by reference Delaware's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved Delaware program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Delaware program.

EPA is incorporating by reference the Delaware approved UST program in 40 CFR 282.57. Section 282.57(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.57 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Delaware's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in Delaware, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved Delaware's procedural and enforcement authorities. Section 282.57(d)(1)(ii) of 40 CFR lists those approved Delaware authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.57(d)(1)(iii) lists for reference and clarity Delaware's statutory and regulatory provisions that are "broader in scope" than the Federal program and which are not, therefore, part of the approved program

being codified in this action. Provisions that are “broader in scope” cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Delaware’s UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). Currently there are no federally recognized tribes in Delaware. Therefore, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

C. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132

(64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

E. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

G. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

H. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s

Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

I. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, because it approves pre-existing State rules that are no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law. For these reasons, this rule is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days

after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Adam Ortiz,
Regional Administrator,
EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Amend § 282.2 by revising the second sentence in paragraph (b) introductory text and paragraph (b)(3) to read as follows:

§ 282.2 Incorporation by reference.

* * * * *

(b) * * * For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. * * *

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2852; Phone Number: (215) 814-2738.

* * * * *

3. Add § 282.57 to read as follows:

§ 282.57 Delaware State-Administered Program.

(a) Delaware is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by Delaware's Department of Natural Resources and Environmental Control, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the Delaware underground storage tank program on September 27, 1996, and approval was effective on October 28, 1996. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) Delaware has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Delaware must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Delaware obtains

approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Delaware has final approval for the following elements of its program application originally submitted to EPA and approved on September 27, 1996, and effective October 28, 1996, and the program revision application approved by EPA, effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(1) *State statutes and regulations—(i) Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of Delaware’s regulations and statutes that are incorporated by reference in this paragraph from DNREC Tanks Compliance Branch, 391 Lukens Sr. New Castle, DE 19720 or DNREC W&HS Compliance and Permitting Section, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

(A) Delaware Statutory Requirements Applicable to the Underground Storage Tank Program, July 2019.

(B) Delaware Regulatory Requirements Applicable to the Underground Storage Tank Program, February 2021.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but which are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) Delaware Code, Title 7, Chapter 60, Sections: 6005; 6008; 6009; 6014; 6017; 6018; 6024.

(2) Delaware Code, Title 7, Chapter 74, Sections: 7406(e)(1)-(3), (f)-(j); 7408; 7411; 7412; 7419.

(3) Delaware Code, Title 29, Chapter 100, Sections: 10001-10007.

(B) The regulatory provisions include:

(1) Delaware Administrative Code, Title 7, Chapter 1351, Sections A-1.4; A-1.6; A-7.0; A-8.1.1; A-8.1.2; A-8.1.4; A-9.0; E-3.1.

(2) Delaware Rules of Court, Superior Court Rules of Civil Procedure, Del. Super. Ct. Civ. Rule 24 Intervention; Court of Chancery Rules, Del. Ct. Ch. Rule 24 Intervention.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are “broader in scope” than the Federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable:

(A) Delaware Code, Title 7, Chapter 74 Underground Storage Tank Act, Sections: 7401 insofar as regulates persons who are not owners or operators; 7402 definition of “responsible party” insofar as regulates persons who are not owners or operators of USTs; 7404 insofar as regulates agricultural and residential tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes and tanks containing heating fuel for consumptive use on the premises where stored; 7405(a)(2) and (3) insofar as requires registration of tanks containing heating fuel for consumptive use on the premises where stored; 7406(a) through introductory paragraph of (e) insofar as regulates persons who are not owners or operators of USTs; 7409(c) insofar as requires registration fees; 7418; 7425(a), (b), (d), and (e); 7425(c) insofar as the use of certified individuals is required for activities other than installation and insofar as establishes a certification program.

(B) Delaware Administrative Code, Title 7, Chapter 1351 Underground Storage Tank Systems, Sections: A-1.2.1 insofar as regulates persons other than owners or operators, and insofar as regulates agricultural/farm and residential UST systems of 1,100 gallons or less used

for storing motor fuels for non-commercial purposes, UST systems containing heating fuel of 1,100 gallons or less for consumptive use on the premises where stored, UST systems holding hazardous wastes listed or identified under Subtitle C of the SWDA or a mixture of such hazardous waste and other regulated substances, wastewater treatment tank systems that are part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act, equipment and machinery containing regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks, UST systems with a capacity of 110 gallons or less, any emergency spill or overflow containment system expeditiously emptied after use, and insofar as provides no exception for USTs containing de minimis amounts of regulated substances; A-2.0 definition of “consumptive use” insofar as the term is limited to activities that do not result in monetary gain, “regulated substance” insofar as includes substances not regulated under the Federal program, and “responsible party” insofar as regulates persons other than owners or operators; A-3.1.10; A-3.3.8; A-4.1.4 insofar as requires fees; A-4.2; A-4.5.2 and -4.6.2 insofar as regulates USTs containing heating fuel for consumptive use on the premises where stored; A-4.7.1 and .2 insofar as requires Delaware to approve or deny construction work within fourteen days of receipt of notification form and construction plans; A-4.9.1 insofar as requires the posting of permits at the UST/construction site; A-10.1.1 insofar as regulates USTs containing heating fuel for consumptive use on the premises where stored; A-11.0 insofar as requires the presence of a certified individual for activities other than installation and insofar as regulates USTs containing heating fuel for consumptive use on the premises where stored; A-12.0 insofar as regulates USTs containing heating fuel for consumptive use on the premises where stored; B-1.1.8; B-1.3.2.4; B-1.21.1 insofar as regulates persons other than owners or operators; B-1.22.1 and .2 insofar as regulates persons other than owners or operators; B-1.29.7.1 insofar as regulates persons other than owners or operators; B-2.1.8; B-2.22.1 insofar as regulates persons other than owners or operators; B-2.23.1 and .2 insofar as regulates persons other than owners or operators; B-2.30.7.1 insofar as regulates persons other than owners or

operators; B-4.2.1.3; B-5.2.1.3; Part C; D-1.3.2.4; D-1.21.1 insofar as regulates persons other than owners or operators; D-1.22.1 and .2 insofar as regulates persons other than owners or operators; D-3.2.1.3; D-4.2.1.3; E-1.2, -1.3, -2.1, -2.2, and -2.4 insofar as regulates persons other than owners or operators; E-2.3.1 and -2.4.1.1 insofar as regulates consumptive use heating fuel UST systems for use on the premises; E-3.2, -3.3, -4.0, -5.0, and -6.0 insofar as regulates persons other than owners or operators; E-6.2.3 insofar as regulates consumptive use heating fuel UST systems for use on the premises; E-7.0; Part G; H-1.1.2.2 insofar as regulates consumptive use heating fuel UST systems for use on the premises; I-1.1.2.2 insofar as regulates consumptive use heating fuel UST systems for use on the premises.

(2) *Statement of legal authority.* “Attorney General’s Statement” signed by the Attorney General on October 12, 2021, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Adequate Enforcement Procedures” submitted as part of the program revision application for approval on November 22, 2021, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the program revision application for approval on November 22, 2021, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and Delaware Department of Natural Resources and Environmental Control, signed by the EPA Regional Administrator on March 22, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

4. Amend Appendix A to part 282 by adding an entry in alphabetical order for Delaware to read as follows:

APPENDIX A TO PART 282—STATE REQUIREMENTS INCORPORATED BY REFERENCE IN PART 282 OF THE CODE OF FEDERAL REGULATIONS

* * * * *

Delaware

(a) The statutory provisions include:

(1) Code of Delaware, Title 7, Chapter 74, Delaware Underground Storage Tank Act

Section 7401 Declaration of Purpose, *except as to persons who are not owners or operators of USTs*

Section 7402 Definitions, *except “responsible party” as to persons who are not owners or operators of USTs*

Section 7403 Referenced standards

Section 7404 Exemptions, *except as to agricultural and residential USTs of 1,100 gallons or less used for storing motor fuel for noncommercial purposes and USTs containing heating fuel for consumptive use on the premises where stored*

Section 7405 Registration by owner, *except (a)(2) and (3) as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 7406 Release of substances prohibited; correction of substance release; Department intervention, *except (a) through the introductory paragraph of (e) as to persons who are not owners or operators of USTs; except (e)(1)-(3) and (f)-(j)*

Section 7407 Release detection, prevention and correction regulations

Section 7409 Delaware Underground Petroleum Storage Tank Response Fund, *except (c) as to registration fees*

Section 7410 Financial Responsibility

Section 7413 Variances

Section 7414 Leaking Underground Storage Tank Committee

Section 7415 Implementation and reporting requirements

Section 7416 Groundwater risk assessment

Section 7417 Use of Hazardous Substance Cleanup Act funding

Section 7425 Certification of underground storage tank contractors, *except (a), (b), (d), and (e); (c) insofar as requires activities other than installation be completed by or in the presence of a certified individual*

(2) [Reserved]

(b) The regulatory provisions include:

(1) Delaware Administrative Code, Title 7, Chapter 1351, Underground Storage Tank Systems

Part A: General Requirements for Underground Storage Tank Systems

Section 1351-A-1.0 General Provisions, *except 1.2.1 as to persons who are not owners or operators of USTs, insofar as regulates UST systems not regulated under the federal regulations, and insofar as UST systems that contain de minimis concentrations of regulated substances are not explicitly exempt from regulation; 1.4; 1.6*

Section 1351-A-2.0 Definitions, *except “consumptive use” insofar as the term is limited to activities that do not result in monetary gain; “regulated substance” insofar as includes substances not regulated under the federal program; “responsible party” as to persons who are not owners or operators of USTs*

Section 1351-A-3.0 Referenced Standards, *except 3.1.10; 3.3.8*

Section 1351-A-4.0, Registration and Notification Requirements, *except 4.1.4 as to fees; 4.2; 4.5.2 and 4.6.2 as to USTs containing heating fuel for consumptive use on the premises where stored; 4.7.1 and 4.7.2 insofar as they require the Department to approve or deny construction*

work within fourteen days of receipt of notification form and construction plans; 4.9.1 insofar as requires permits be kept at the UST/construction site

Section 1351-A-5.0 Recordkeeping

Section 1351-A-6.0 Alternative Procedures Approval Requirements

Section 1351-A-8.0 Submittal of Confidential Information, *except 8.1.1; 8.1.2; 8.1.4*

Section 1351-A-10.0 Requirements for Operator Training, *except 10.1.1 as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-A-11.0 Use of Certified Contractors, *except insofar as requires a certified individual to be present for activities other than installation, and as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-A-12.0 Request for No Further Action Determination, *except as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-A-13.0 Additional Compatibility Requirements for Regulated Substances Containing Ethanol and Biodiesel

Section 1351-A-14.0 Conditions Required for Product Piping Slope Exemption

Part B: Requirements for Installation, Operation and Maintenance of Underground Storage Tank Systems Storing Regulated Substance Excluding Consumptive Use Heating Fuel or Hazardous Substance UST Systems

Section 1351-B-1.0 Installation, Operation and Maintenance Requirements For UST Systems Storing Regulated Substance Excluding Consumptive Use Heating Fuel or Hazardous Substance Installed on or After January 11, 2008, *except 1.1.8; 1.3.2.4; 1.21.1, 1.22.1, 1.22.2, and 1.29.7.1 as to persons who are not owners or operators of USTs*

Section 1351-B-2.0 Installation, Operation and Maintenance Requirements for UST Systems Storing Regulated Substance Installed Prior to January 11, 2008, Excluding Consumptive Use Heating Fuel or Hazardous Substance, *except 2.1.8; 2.22.1, 2.23.1, 2.23.2, 2.30.7.1 as to persons who are not owners or operators of USTs*

Section 1351-B-3.0 Change in Service Requirements for UST Systems Storing Regulated Substance Excluding Consumptive Use Heating Fuel or Hazardous Substance

Section 1351-B-4.0 Removal or Closure in Place Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance, *except 4.2.1.3*

Section 1351-B-5.0 Change In Substance Stored Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance, *except 5.2.1.3*

Section 1351-B-6.0 Requirements for Empty UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

Part D: Requirements for Installation, Operation and Maintenance of Underground Storage Tank Systems Storing Hazardous Substance

Section 1351-D-1.0 Installation, Operation and Maintenance Requirements for UST Systems Storing Hazardous Substance, *except 1.3.2.4; 1.21.1, 1.22.1 and 1.22.2 as to persons who are not owners or operators of USTs*

Section 1351-D-2.0 Change In Service Requirements for UST Systems Storing Hazardous Substance

Section 1351-D-3.0. Removal or Closure in Place Requirements for UST Systems Storing Hazardous Substance, *except 3.2.1.3*

Section 1351-D-4.0 Change In Substance Stored Requirements for UST Systems Storing Hazardous Substance, *except 4.2.1.3*

Section 1351-D-5.0. Requirements for Empty UST Systems Storing Hazardous Substance

Part E: Requirements for Reporting, Release Investigation, Remedial Action and No Further Action Determinations for Underground Storage Tank Systems

Section 1351-E-1.0 Reporting Requirements, *except 1.2 and 1.3 as to persons who are not owners or operators of USTs*

Section 1351-E-2.0 Indicated Release Investigation Requirements, *except 2.1, 2.2, and 2.4 as to persons who are not owners or operators of USTs; 2.3.1 and 2.4.1.1 as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-E-3.0 Release Response Requirements, *except 3.1; 3.2 and 3.3 as to persons who are not owners or operators of USTs*

Section 1351-E-4.0 Hydrogeologic Investigation Requirements, *except as to persons who are not owners or operators of USTs*

Section 1351-E-5.0 Remedial Action Requirements, *except as to persons who are not owners or operators of USTs*

Section 1351-E-6.0 No Further Action Requirements, *except as to persons who are not owners or operators of USTs; 6.2.3 as to USTs containing heating fuel for consumptive use on the premises where stored*

Part F: Financial Responsibility Requirements for UST Systems

Section 1351-F-1.0 Financial Responsibility Requirements for UST Systems

Section 1351-F-2.0 Financial Responsibility Mechanisms

Sections 1351-F-3.1 to -3.18, Forms A through R

Part H: Requirements for Installation, Operation and Maintenance of Field-Constructed Underground Storage Tank Systems

Section 1351-H-1.0 General Requirements, *except 1.1.2.2 as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-H-2.0 Additions, Exceptions, and Alternatives for UST systems with Field-Constructed Tanks

Part I: Requirements for Installation, Operation and Maintenance of Airport Hydrant Fuel Systems

Section 1351-I-1.0 General Requirements, *except 1.1.2.2 as to USTs containing heating fuel for consumptive use on the premises where stored*

Section 1351-I-2.0 Additions, Exceptions, and Alternatives for Airport Hydrant Fuel Systems

(2) [Reserved]

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